

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN BRYANT LAWSON,

Plaintiff,

v.

WILLIAM M LAWSON, JR., SHARON
ONDREYCO, M.D., individually and in their
capacities as Trustees of the William M. Lawson
Irrevocable Trust dated December 17, 1997, and
DOES 1 to 5, inclusive,

Defendants.

3:14-cv-00345-WGC

ORDER

Re: ECF No. 71

Before the court is Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Medical Conditions. (ECF Nos. 71, 75.)¹ Plaintiff filed a response. (ECF No. 89.) Pursuant to Local Rule 16-3(b), no reply was permitted. Under Local Rule 78-2, the court deems this matter appropriate for decision without a hearing.

In connection with his rescission claim, Plaintiff alleges that he suffered from medical conditions which left him vulnerable to undue influence by Defendants. (ECF No. 25 ¶¶ 4, 44.)

Defendants seek an order precluding the introduction of evidence concerning Plaintiff's medical conditions, medications, and/or the impact of such conditions or medications on his ability to freely and voluntarily enter into the 2013 settlement agreement at issue in his rescission claim. (ECF No. 71.)

First, Defendants contend that expert testimony is required to establish that his medical conditions and/or medications in 2013 impaired his understanding, memory, attention and cognition, restricting his ability to freely and voluntarily execute a settlement agreement. (ECF No. 71 at 3.) Second, they argue that Plaintiff may not testify as to his own mental condition, or

¹ Refers to court's Electronic Case Filing number.

1 as to the existence or treatment of physical illnesses. (*Id.*, citing *Frisone v. United States*, 270
2 F.2d 401, 403 (9th Cir. 1959); *Layton v. Yankee Caithness Joint Venture, L.P.*, 774 F.Supp. 576,
3 580 (D. Nev. 1991); *Ramona v. Superior Court*, 57 Cal.App.4th 107, 121 (1997)). Third, they
4 assert that Plaintiff did not disclose any other witness who could competently testify as to the
5 impact of his medical conditions on his ability to execute a settlement agreement. Finally,
6 Defendants state, without elaboration, that any such evidence would be inadmissible hearsay that
7 would unduly prejudice Defendants.

8 In response, Plaintiff reiterates his allegations that as a result of sustaining multiple
9 injuries he was left disabled and with pain requiring treatment with high levels of narcotic pain
10 relievers. He notes that defendant Dr. Sharon Ondreyco is a licensed practicing oncologist in
11 Arizona. He claims that beginning in the mid-2000s he informed the Defendants repeatedly of
12 his need for dental and medical funds for treatment of dental problems, pain management, and
13 for a diagnosed tumor. He argues that Defendants employed economic duress and coercion to get
14 him to enter into the settlement agreement, while he had no financial ability to continue the
15 litigation while his own medical and dental needs went unmet. Plaintiff asserts that evidence of
16 his medical condition, medications and his state of mind at the time he considered entering into
17 the settlement agreement are highly relevant and come within the factors that the court must
18 consider in determining his rescission claim under California law.

19 Plaintiff maintains that evidence of his medical conditions, medications or the impact of
20 those things on his ability to freely and voluntarily enter into the settlement agreement do not
21 require expert testimony. He argues that Defendants reliance on *Frisone* is misplaced as that case
22 concerned causation, i.e., whether a lay witness could give opinions as to the medical cause of
23 the plaintiff's claimed medical condition, and under those circumstances, only expert testimony
24 is allowed. The issue here, on the other hand, is whether a lay witness such as Plaintiff or
25 Ms. Linde can testify regarding how Plaintiff's condition presented itself as to symptomology,
26 how it affected his ability to function, and how Plaintiff experienced his condition. Plaintiff
27 states that he does not intend to testify as to what caused his medical condition, but lay witnesses
28 may testify to their personal knowledge of Plaintiff's symptomology, how his conditions affected

1 his ability to function, his emotional state and his emotional stability, which will include
 2 discussions of his physical state of being, his brain tumor, dental needs and the use of narcotic
 3 pain relievers.

4 Insofar as Plaintiff argues that Plaintiff did not disclose a lay witness to testify on this
 5 subject, Plaintiff asserts that both Plaintiff and Ms. Linde were identified as witnesses who
 6 would testify as to the relevant facts of the complaint and both were deposed as to Plaintiff's
 7 medical condition. He attaches excerpts of his deposition in support of his position.

8 Defendants rely on *Frisone* to support their contention that all evidence of Plaintiff's
 9 medical condition and medications should be excluded at trial. In that case, the defendant was
 10 prosecuted for perjury related to testimony given in a prior trial and asserted as a defense that he
 11 had an impaired memory and did not intend to testify falsely. *Frisone v. U.S.*, 270 F.2d 401, 402
 12 (9th Cir. 1959). The defendant took the stand and testified about his failing memory. *Id.* When he
 13 was re-called by his own counsel, he was asked if he suffered from mental illness in the past, and
 14 the government's attorney objected. *Id.* The defense attorney tried to make an offer of proof to
 15 show a failure of Plaintiff's memory, but the trial judge concluded that was not a proper defense.
 16 *Id.* The Ninth Circuit stated that the reason for this line of questioning was clearly to corroborate
 17 the defendant's testimony regarding his faulty memory. *Id.* The Ninth Circuit concluded Plaintiff
 18 was not competent to so testify:

19 [A]n offer of proof that appellant was treated in the Marine Corps could not of
 20 itself qualify appellant to testify that the mental condition for which he was
 21 treated in the Marine Corps, if such treatment were given, resulted in loss of
 22 memory. Such testimony could only be given by experts.

23 *Id.* "As a general rule, a witness may not testify to his own mental condition, past or present." *Id.*
 24 at 403 (citations omitted). The Ninth Circuit determined that the purpose of defense counsel's
 25 question was "to establish that the mental illness from which appellant was said to suffer was of
 26 such a serious nature that it resulted in a permanent impairment of his memory. Such testimony
 27 by appellant was inadmissible as being hearsay or opinion evidence." *Id.* (citation omitted). Lay
 28 witnesses have also "been held incompetent to testify as to the existence or treatment of physical
 illnesses[.]" but "lay witnesses have been allowed to testify as to common illnesses the existence
 or treatment of which can be termed a 'fact' within the common knowledge of lay persons[.]" *Id.*

1 (citations omitted). With respect to mental conditions, lay witnesses have also been permitted to
2 testify that they are nervous, worried, or had an anxious state of mind. *Id.* (citation omitted). In
3 fact, in *Frisone*, the defendant was permitted to testify “as to his faulty recollection and poor
4 memory,” but he could not testify as to “the existence or treatment of a mental illness serious
5 enough to cause permanent memory impairment.” *Id.*

6 The take-away from *Frisone* is that the Plaintiff may testify about his mental state and his
7 physical condition, but he may not testify as to causation and cannot express medical diagnoses.
8 Plaintiff cannot testify that any condition from which he suffered *caused* him to be unable to
9 freely and voluntarily enter into a settlement agreement. He can only testify as to how he felt
10 physically and emotionally around the time he contemplated entering into the settlement
11 agreement, but as a lay witness he cannot express a medical diagnosis or causation unless it is
12 within the usual and ordinary experience of a lay person. Similarly, Ms. Linde may testify as to
13 what she observed with respect to Plaintiff’s physical and mental condition, but she also may not
14 express a medical diagnosis or opinions on causation.

15 This is consistent with Federal Rule of Evidence 701 which provides:

16 If a witness is not testifying as an expert, testimony in the form of an opinion is
17 limited to one that is: (a) rationally based on the witness’s perception; (b) helpful
18 to clearly understanding the witness’s testimony or determining a fact in issue;
and (c) not based on scientific, technical, or other specialized knowledge within
the scope of Rule 702.

19 Fed. R. Evid. 701.

20 Insofar as Defendants argue that they will be prejudiced if this evidence is permitted at
21 trial, the record reflects that Defendants were allowed to explore both Plaintiff’s and Ms. Linde’s
22 testimony on this subject. In deposition, Mr. Digesti asked Plaintiff what medications he was
23 taking during the California lawsuit, and he responded Norco and Soma and a high blood
24 pressure medication. (ECF No. 89-1 at 15-16.) He also discussed when he took the medications.
25 (*Id.* at 16.) He was also asked about medical and disability issues he had during the California
26 lawsuit, which Plaintiff discussed. (*Id.* at 16-17.) There was a discussion about mental or
27 physical conditions that affected his ability to enter into the settlement agreement. (*Id.* at 18.)
28

1 Ms. Linde was also specifically asked about mental and physical problems she observed Plaintiff
2 as having during the time the California petition was pending. (ECF No. 89-2.)

3 Therefore, Defendants' motion in limine to exclude any evidence regarding Plaintiff's
4 medical conditions (ECF No. 71) is **GRANTED IN PART AND DENIED IN PART**. Plaintiff
5 may not present lay witness testimony regarding medical diagnoses or causation, but Plaintiff
6 may present lay witness testimony regarding factual matters and opinions within the personal
7 knowledge of the witness concerning Plaintiff's medical condition.

8 **IT IS SO ORDERED.**

9
10 DATED: September 17, 2015.



WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE